

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6795 OF 2013
(Arising out of SLP(C) No.11305 of 2006)

Assistant Engineer, Rajasthan State
Agriculture Marketing Board, Sub-Division, Kota ... Appellant

Versus

Mohan Lal ... Respondent

JUDGMENT

R.M. LODHA, J.

Leave granted.

2. The consequent relief to be granted to the workman whose termination is held to be illegal being in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, "ID Act") is the sole question for our decision in this appeal.

Were it not for the argument strongly pressed by the learned counsel for the respondent that the delay in raising industrial dispute in the absence of any such objection having been raised by the employer before the Labour Court is no ground to mould the relief of reinstatement, we would not have gone into the question which is already answered in a long line of cases of this Court.

3. Mohan Lal, the workman, was engaged as "Mistri" on muster roll by the appellant, employer, from 01.11.1984 to 17.02.1986. On 18.02.1986, the services of the workman were terminated. While doing so, the workman was neither given one month's notice nor was he paid one month salary in lieu of that notice. He was also not paid retrenchment compensation.

4. In 1992, the workman raised industrial dispute which was referred by the appropriate government to the Labour Court, Kota (Rajasthan) for adjudication. The dispute referred to the Labour Court reads as under:

"Whether 18.02.86 termination of labour Shri Mohan Lal S/o Shri Dhanna Lal (Post-Mistri), who has been represented by Regional Secretary, Hind Mazdoor Sabha, Kota Cantt., from service by the Employer - Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division - Kota is legal and justifiable? If not, then applicant - labour is entitled to get what relief and compensation?"

5. The Labour Court in its award dated 03.02.1999 held that the workman had completed more than 240 days in a calendar year and his services were terminated in violation of Section 25-F of the ID Act. Having held that, the Labour Court declared that the workman was entitled to be reinstated with continuity in service and 30% back wages.

6. The employer was successful in challenging the above award before the Single Judge of the High Court. The Single Judge in his judgment dated 23.08.2001 though agreed with the Labour Court that the employer had terminated workman's services in violation of Section 25-F but he was of the view that the Labour Court was not justified in directing the reinstatement of the workman because the workman had raised the industrial dispute after 6 years of his termination. Relying upon the decision of this Court in Balbir Singh[1], the Single Judge substituted the order of reinstatement by the compensation which was quantified at Rs.5,000/-.

7. The workman challenged the order of the learned Single Judge in an intra-court appeal. The Division Bench of the High Court allowed the workman's appeal on 19.11.2005 by relying upon the decision of this Court in Ajaib Singh[2]. The Division Bench restored the award passed by the Labour Court.

8. In Nagar Mahapalika[3], it was held by this Court that non compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (this provision is broadly pari materia with Section 25-F), although, leads to the grant of a relief of reinstatement with full back wages and continuity of service in favour of the workman, the same would not mean that such relief is to be granted automatically or as a matter of course. It was emphasised that the Labour Court must take into consideration the relevant facts for exercise of its discretion in granting the relief.

9. The same Bench that decided Nagar Mahapalika³ in Municipal Council, Sujampur[4], reiterated the above legal position. That was a case where the Labour Court had granted reinstatement in service with full back wages to the workman as statutory provisions were not followed. The award was not interfered with by the High Court. However, this Court granted monetary compensation in lieu of reinstatement.

10. In Mamni[5] following Nagar Mahapalika³, this Court held that the reinstatement granted to the workman because there was violation of Section 25-F, was not justified and modified the order of reinstatement by directing that the workman shall be compensated by payment of a sum of Rs.25,000/- instead of the order of the reinstatement.

11. In M.C. Joshi[6], this Court was concerned with the situation which was very similar to the present case. The workman in that case was employed as a daily wager by the Uttaranchal Forest Development Corporation on 01.08.1989. His services were terminated on 24.11.1991 in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. He had completed 240 days of continuous work in a period of twelve months preceding the order of termination. The workman approached the Conciliation Officer on or about 02.09.1996, i.e., after a period of about five years. The Labour Court granted to the workman, M.C. Joshi, relief of reinstatement with 50% back wages. In the writ petition filed by the Corporation, the direction of reinstatement was maintained but back wages were reduced from 50% to 25%. This Court substituted the award of reinstatement by compensation for a sum of Rs.75,000/-*.

12. In Ashok Kumar[7], this Court was concerned with the question as to whether the Labour Court was justified in awarding relief of reinstatement in favour of the workman who had worked as daily wager for two years. His termination was held to be violative of U.P. Industrial Disputes Act. This Court held that the Labour Court should not have directed reinstatement of the workman in service and substituted the order of reinstatement by awarding compensation of Rs.50,000/-

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13. In Keshab Deb[8], the termination of the workman who was a daily wager, was held illegal on diverse grounds including violation of the provisions of Section 25-F. This Court held that even in a case where order of termination was illegal, automatic direction for reinstatement with full back wages was not contemplated. The Court substituted the order of reinstatement by an award of compensation of Rs.1,50,000/-****.

14. In Jagbir Singh[9], the Court speaking through one of us (R.M. Lodha,J) in a case where the workman had worked from 01.09.1995 to 18.07.1996 as a daily wager granted compensation of Rs.50,000/- to the workman in lieu of reinstatement with back wages*****.

15. It is not necessary to refer to subsequent three decisions of this Court, namely, Laxmi Kant Gupta[10], Man Singh[11] and Santosh Kumar Seal[12], where the view has been taken in line with the cases discussed above. As a matter of fact in Santosh Kumar Seal[12], this Court awarded compensation of Rs.40,000/- to each of the workmen who were illegally retrenched as they were engaged as daily wagers about 25 years back and worked hardly for two or three years. It was held that the relief of reinstatement cannot be said to be justified and instead granted monetary compensation.

16. Recently in the case of Gitam Singh[13], this Court speaking through one of us (R.M. Lodha,J) on consideration of the most of the cases cited above reiterated the principle regarding exercise of judicial discretion by the Labour Court in a matter where the termination of the workman is held to be illegal being in violation of Section 25-F in these words : "The Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute".

17. Mr. Badri Prasad Singh, learned counsel for the workman, however, vehemently contended, which was also the contention of the workman before the Division Bench, that plea regarding delay was not raised before the Labour Court and, therefore, the delay in raising the industrial dispute should not come in the way of the workman in grant of relief of reinstatement. He relied upon Ajaib Singh². In that case, the services of the workman, Ajaib Singh were terminated on 16.07.1974. Ajaib Singh issued the notice of demand on 18.12.1981. No plea regarding delay was taken by the employer before the Labour Court. The Labour Court directed the employer to reinstate Ajaib Singh with full back wages. The award was challenged before the High Court. The Single Judge held that Ajaib Singh was disentitled to relief of reinstatement as he slept over the matter for 7 years and confronted the management at a belated stage when it might have been difficult for the management to prove the guilt of the workman. The judgment of the Single Judge was upheld by the Division Bench. The judgment of the Division Bench was challenged by the workman before this Court. The Court was persuaded by the grievance of the workman that in the absence of any plea on behalf of the employer and any evidence regarding delay, the workman could not be deprived of the benefits under the I.D. Act merely on the technicalities of law. However, the Court was of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying some part of the back wages.*****

18. Ajaib Singh², in our view, cannot be read as laying down an absolute proposition of law that where plea of delay is not raised by the employer, the delay in raising the industrial dispute by the workman pales into insignificance and the Labour Court will be unjustified in taking this circumstance into

consideration for moulding the relief. On the contrary, in Ajaib Singh², the Court said that on account of admitted delay, the Labour Court ought to have appropriately moulded the relief though this Court moulded the relief by denying the workman some part of the back wages.

19. In a subsequent decision in Balbir Singh¹, this Court observed that Ajaib Singh² was confined to the facts and circumstances of that case. It is true that in Balbir Singh¹, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh¹ where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially".

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh¹³ that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 01.11.1984 to 17.02.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.02.1986. The workman raised the industrial dispute in 1992, i.e., after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellants (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellants to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.

23. The appeal is partly allowed to the above extent with no order as to costs.

.....J.

(R.M. Lodha)

.....J.

(Madan B. Lokur)

NEW DELHI
AUGUST 16, 2013.

* * Pg. 358; (2007) 9 SCC 353

"We are, therefore, of the opinion that keeping in view the nature and period of services rendered by the respondent herein as also the period during which he had worked and the fact that he had raised an industrial dispute after six years, interest of justice would be met if the impugned judgments are substituted by an award of compensation for a sum of Rs.75,000/- in favour of the respondent."

[7] Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr; (2008) 4 SCC 261

* **Pg. 265; (2008) 4 SCC 261

"Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs.50,000/- to the first respondent. The said sum should be paid to the respondent within eight weeks from date, failing which the same shall carry interest at the rate of 12% per annum. The appeal is allowed to the aforesaid extent. However, in the facts and circumstances of this case, there shall be no order as to costs."

[8] Telecom District Manager v. Keshab Deb ; (2008) 8 SCC 402

* *** Pg. 412; (2008) 8 SCC 402

"27. Even if the provisions of Section 25-F of the Industrial Disputes Act had not been complied with, the respondent was only entitled to be paid a just compensation. While, however, determining the amount of compensation we must also take into consideration the stand taken by the appellants. They took not only an unreasonable stand but raised a contention in regard to the absence of jurisdiction in the Tribunal. They admittedly did not comply with the order passed by the Tribunal for a long time. It had raised a contention which is not otherwise tenable.

28. We, therefore, are of the opinion that in the peculiar facts and circumstances of the case interest of justice shall be subserved if the respondent is directed to be paid a compensation of Rs 1,50,000 (Rupees one lakh fifty thousand only). The said sum should be paid to him within four weeks, failing which it will carry interest @ 9% per annum."

[9] Jagbir Singh v. Haryana State Agriculture Marketing Board; (2009) 15 SCC 327

* **** Pg. 335; (2009) 15 SCC 327

"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.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.

18. In a case such as this where the total length of service rendered by the appellant was short and intermittent from 1-9-1995 to 18-7-1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs 50,000 to the appellant by Respondent 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @

9% per annum."

[10] Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta ; (2009) 16 SCC 562

[11] Bharat Sanchar Nigam Limited v. Man Singh ; (2012) 1 SCC 558

[12] Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Ors. ; (2010) 6 SCC 773

[13] Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh; (2013) 5 SCC 136

* ****Pg. 91; (1999) 6 SCC 82

"11. In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even-handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just fight between equals", the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on the technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution.

12. We are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the Labour Court with the modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the extent of 60 per cent with effect from 8-12-1981 when he raised the demand for justice till the date of award of the Labour Court, i.e., 16-4-1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs.5,000 to be paid by the respondent management."