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HIGH COURT OF GUJARAT

RANJEETSINH JAGDISHSINH THAKUR
Versus
P S INDUSTRIAL ENGINEERS LTD AND ORS

Date of Decision: 11 December 2012

Citation: 2012 LawSuit(Guj) 1338

Hon'ble Judges: K S Jhaveri

Eq. Citations: 2013 1 CLR 387, 2013 2 LLJ 309

Case Type: Special Civil Application

Case No: 1405 of 2004

Final Decision: Petition dismissed

Advocates: Nanavati Associates, Thakkar Nanavati Associates

K.S. Jhaveri, J.

[1] The petitioners herein have challenged the award dated 02.05.2003 and 03.05.2003 passed by the Labour Court, Navsari in Reference (LCN) No. 20 and 13 of 2000 respectively whereby the Labour Court rejected the reference of reinstatement with backwages.

[2] It is the case of the petitioners that the petitioners were appointed as Watchmen with the respondent no. 1 and that the services of the petitioners were terminated without following due procedure of law. It is further the case of the petitioners that the petitioners were not given retrenchment compensation and therefore the references were filed before the Labour Court. The Labour Court after hearing the parties passed the aforesaid award.

[3] Ms. Sangeeta Pahwa, learned advocate appearing for M/s. Thakkar Associates for the petitioners submitted that the Labour Court vide its award wrongly rejected the reference of the petitioners though it was admitted that the petitioner was not paid any retrenchment compensation. She submitted that paying compensation is a mandatory precondition for valid retrenchment, non-compliance of which makes the retrenchment valid or inoperative.

3.1 Ms. Pahwa further submitted that the impugned awards are passed without considering that the order of retrenchment is passed in violation of Sections 25(F), (G), (H) & (N) of the I.D. Act. She submitted that as the retrenchment compensation is not paid to the petitioners the action on the part of the respondents in terminating the petitioners has become null and void and therefore the petitioners are required to be reinstated in service.

3.2 In support of her submissions, Ms. Pahwa has relied upon the following decisions :

Nar Singh Pal vs. Union of India and Others, 2000 3 SCC 588 para 13 of which reads as under:

13. The Tribunal as also the High Court, both appear to have been moved by the fact that, the appellant had encashed the cheque through which retrenchement compensation was paid to him. They intended to say that once retrenchement compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchement. Thus, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the 'temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs. 6,350/ . was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppels against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.

Oswal Agro Furane Ltd. And Another vs. Oswal Agro Furane Workers Union and Others, 2005 3 SCC 224 of which read as under:

14. A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions

precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment; Section 25-O speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.

15. A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

16. It is trite that having regard to the maxim "ex turpi causa non oritur actio", an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. The Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of sub-section (7) of Section 25- N and sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well-known. [See East End Dwellings Co. Ltd. V. Finsbury Borough Council, 1951 2 AllER 587, Om Hemrajani vs. State of U.P. and Another, 2005 1 SCC 617 and M/s Maruti Udyog Ltd. vs. Ram Lal & Ors., 2005 1 Scale 585.

17. The consequences flowing from such a mandatory requirements as contained in Sections 25-N and 25-O must, therefore, be given full effect. The decision of this Court in P. Virudhachalam relied upon by Mr. Puri does not advance the case of the Appellant herein. In that case, this Court was concerned with a settlement arrived at in terms of Section 25-C of the Act. The validity of such a settlement was upheld in view of the first proviso to Section 25-C of the Act. Having regard to the provisions contained in the first proviso appended to Section 25-C of the Act, this Court observed that Section 25-J thereof would not come in the way of giving effect to such settlement. However, the provisions contained in Sections 25- N and 25-O do not contain any such provision in terms whereof the employer and employees can arrive at a settlement.

Anoop Sharma vs. Executive Engineer, Public Health Division No. 1, Panipat (Haryana), 2010 5 SCC 497 para 18 of which reads as under:

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

Indian Hume Pipe Co. Ltd. vs. The Workmen, 1960 AIR(SC) 251 paras 5 to 8 of which read as under:

5. On the contentions raised in the tribunals below, the principal point which calls for our decision is whether a scheme of gratuity can be framed by industrial tribunals for workmen who are entitled to the benefits of 25F of the Act. This question has been frequently raised before industrial tribunals and has generally been answered in favour of the employees. In dealing with this question it is important to bear in mind the true character of gratuity as distinguished from retrenchment compensation. Gratuity is a kind of retirement benefit like the provident fund or pension. At one time it was treated as payment gratuitously made by the employer to his employee at his pleasure, but as a result of a long series of decisions of industrial tribunals gratuity has now come to be regarded as a legitimate claim which workmen can make and which, in a proper case, can give rise to an industrial dispute. Gratuity paid to workmen is intended to help them

after retirement, whether the retirement is the result of the rules of superannuation or of physical disability. The general principle underlying such gratuity schemes is that by their length of service workmen are entitled to claim a certain amount as a retrial benefit.

6. On the other hand retrenchment compensation is not a retirement benefit at all. As the expression " retrenchment compensation" indicates it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigor of hardship which retrenchment inevitably causes. The retrenched workman is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. At the com- mencement of his employment a workman naturally expects and looks forward to security of service spread over a long period; but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment. Thus the concept on which grant of retrenchment compensation is based is essentially different from the concept on which gratuity is founded.

It is true that a retrenched workmen would by virtue of his retrenchment be entitled to claim retrenchment compensation in addition to gratuity; because industrial adjudication has generally taken the view that the payment of retrenchment compensation cannot affect the workmen's claim for gratuity. In, fact the whole object of granting retrenchment com- pensation is to enable the workman to keep his gratuity safe and unused so that it may be available to him after his retirement. Thus the object of granting retrenchment compensation to the employee is very different from the object which gratuity is intended to serve. That is why on principle the two schemes are not at all irreconcilable nor even inconsistent ; they really complement each other; and so, on considerations of social justice there is no reason why both the claims should not be treated as legitimate. The fact that they appear to constitute a double benefit does not affect their validity. That is the view which industrial tribunals have generally taken in a large number of reported decisions on this point.

8. Let us now refer to some of these decisions and indicate very briefly the broad outlines of the development of industrial law on this subject. Whenever industrial tribunals deal with the employees' claim for gratuity they consider the financial position of the employer before granting the employees' demand for framing a gratuity scheme; it is only if they are satisfied that the financial condition of the employer is satisfactory and the burden of the gratuity scheme can be borne by him that they proceed to frame schemes of gratuity and thereby secure for the

employees the retirement benefit in the form of gratuity. Though awards framing such schemes had been made for some 38

years before 1951, the question of framing a gratuity scheme was carefully examined by the Labour Appellate Tribunal in the case of The, Army and Navy Stores Ltd., Bombay, And Their Workmen (1). The scheme framed in this case directed the payment of gratuity on the following scale:

" (1) On the death of an employee while in the service of the company or on his becoming physically or mentally incapable of further service 'month's salary or wages for each year of continuous service, to be paid to the disabled employee or, if he has died, to his heirs or legal represen- tatives or assigns.

(2) On voluntary retirement or resignation of an employee after 15 years continuous service- 1/2 month's salary or wages for each year of continuous service.

(3) On termination of service by the company month's salary or wages for each year of completed service." Under this scheme gratuity was not, however, payable to any employee dismissed for misconduct. This scheme has been generally treated as a model scheme in all subsequent disputes about gratuity.

[4] Mr. Joshi, learned advocate appearing for the respondent no. 1 supported the impugned awards and submitted that the same do not call for any interference by this Court. He submitted that considering the fact that all the retirement dues were paid to the petitioners and one month salary as notice pay, the termination of the petitioners cannot be said to be void and illegal. He submitted that having accepted the said amount which is also admitted by the petitioners themselves in the cross examination before the labour court it cannot be said that the termination of the petitioners is nullity.

[5] Having heard learned advocates for both the sides and having perused the papers on record, it is borne out that the petitioners were given one month salary as notice pay while terminating his service. The respondent company paid the amount of gratuity by way of account payee cheque. The amount towards provident fund has also been received by the petitioners. The said factum has also been admitted by the petitioners in the cross examination.

[6] The issue before the labour court in the reference was whether the petitioners were entitled to reinstatement with continuity of service and backwages. The labour court after going through the evidence in detail came to the conclusion that it cannot be said that the respondent company has violated the provisions of the Act. The

respondent company has paid all the dues payable to the petitioners including notice pay and thereafter terminated the petitioners. The labour court has also considered the admission by the petitioners in respect of the dues received by them. The dues received by the petitioners are those which are entitled at the time of retirement or termination of service. This court is in complete agreement with the reasonings adopted and findings arrived at by the labour court. The decisions cited by learned advocate for the petitioners are not applicable on the facts and circumstances of the present case since the dues have already been accepted by the employees.

[7] In the premises aforesaid, petitions are devoid of any merits and therefore are accordingly dismissed. Rule is discharged.

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