

A

STATE OF PUNJAB AND ORS.

v.

DES BANDHU

MARCH 15, 2007

B

[DR. ARJIT PASAYAT AND S.H. KAPADIA, JJ.]

C

Labour Laws—Termination—Claim of reinstatement and back wages—Delay in pursuing the remedy before industrial Forum—Entitlement of claim—Held: There being delay in filing Reference due to pendency of civil suit and appeal employer directed to pay Rs. 60,000/- In full and final settlement of claim instead of re-instatement—Industrial Disputes Act, 1947.

D

It was the workmen's case that he was appointed as surveyor on 15.2.1988. He worked for more than 240 days in 12 calendar months and was terminated from service without any notice or written order from 26.3.1989. Assuming that he is still in service, respondent filed civil suit for declaration with regard to his continuance in service of employer but the same was dismissed. Appeal was also dismissed on 08.02.1997. Respondent then filed Reference Labour Court held that the respondent was entitled to reinstatement with continuity of service with full back wages from the date of termination till actual reinstatement. Appellant-employer filed writ petition. Appellants contended that the reference was highly belated; and that since the respondent had worked on purely temporary basis for 89 days only respondent was not entitled to any relief. High Court dismissed the writ petition. Hence the present appeal.

E

F

Disposing of the appeal, the Court

G

HELD: The alleged order of termination was passed in February, 1989. A demand notice was issued in December 1997. The delay was occasioned to a considerable extent due to pendency of Civil Suit and the appeal, In view of these peculiar facts, the order passed by the Labour Court as upheld by the High Court is modified. Instead of reinstatement and/or payment of back wages for a certain period appellants are directed to pay a sum of Rs. 60,000/- to the respondent which will be in full and final settlement of the claims of the respondent. [Para 7] [29-A-B]

H

Anil Kumar Puri v. Presiding Officer, Labour Court, Chandigarh and Anr., [2000] 9 SCC 129, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9042 of 2003.

From the Final Judgment and Order dated 25.10.2002 of the High Court of Punjab & Haryana at Chandigarh in C.W.P. No. 9503 of 2002. B

Dr. Rajeev Dhawan, (A.C.) Kuldip Singh. R.K. Pandey, Sanjay Katyal and Arun K. Sinha, Vinay Mohan Sharma, Ravinder Yadav, Neha Sharma, Dr. Vipin Gupta, A.P. Mohanty, Ranbir Yadav, S. Janani and Deepak Goel for the appearing parties. C

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellants. In a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 (in short the 'Act'), the Presiding officer, Labour Court, Gurdaspur (in short the 'Labour Court') held that the respondent was entitled to be reinstated with continuity of service with full back wages from the date of termination till actual reinstatement. D

2. The case of the workman as briefly stated in the demand notice dated 3.12.1997 and statement is that he was appointed as surveyor by the concerned Superintending Engineer on 15.2.1988 and worked as such for more than 240 days in 12 calendar months and that he was non-employed without any notice/written order from 26.3.1989 which was dishonest, illegal as it was done in contravention of Sections 25-F, N and G of the Act without payment of retrenchment compensation etc. and that juniors to him have been retained in service and fresh recruitments have also been made after termination of service of the workman and that he was getting the pay scale of Rs.400-600 at the time of termination of his services. It was further pleaded that no termination order was given to him. Assuming that he is still in service, he filed the Civil Suit on 28.2.1990 for declaration that he is continuing in service of the employer and the said suit was dismissed by the Civil Court on 23.12.1991 and the appeal dated 17.1.1992 preferred against the said order dismissing his suit was also dismissed by the Appellate Court on 8.2.1997. It was further pleaded that since 1989, he has been taking action for his E
F
G
H

A redressal for treating him to be in continuous service without challenging the order of termination dated 26.3.1989 in the Civil Court and the Civil Court declined to give him any relief regarding continuing in service and the findings of the Civil Court that he is no longer in service after 26.3.1989 and his services have to be treated to have been terminated which fact was not subject matter of the above suit. In the end, it was prayed that the reference may be accepted and the employer be directed to reinstate him with continuity of service and with full back wages from the date of termination till his reinstatement. The Labour Court accepted the plea and passed the award as afore-noted. The same was challenged before the High Court by filing a writ petition.

C 3. In the writ petition, the appellants took the stand that the reference was highly belated and the respondent was not entitled to any relief and he worked on purely temporary basis i.e. on 89 days basis. It was also specifically pleaded that even otherwise he had not worked for 240 days as erroneously held by the Labour Court and the High Court. Considering the fact that in many cases the effect of non-compliance of Section 25-F of the Act involved and entitlement of back wages was considered, by order dated 11.8.2005, Dr. Rajiv Dhawan, learned Senior counsel was requested to act as Amicus Curiae. During the course of hearing Dr. Dhawan has referred to various decisions of this Court and the view expressed by various Benches.

E 4. Main stand of the appellants appears to be the belated approach for adjudication in the Industrial Forums after having taken resort to filing of suit and an appeal against the decree passed in the said suit.

F 5. Learned counsel for the respondent has submitted that merely because the respondent had under erroneous advice moved the Civil Court, he should not be deprived of the relief granted.

G 6. In *Anil Kumar Puri v. Presiding Officer, Labour Court, Chandigarh and Anr.*, [2000] 9 SCC 129 it was held by this Court that there was no deliberate delay on the part of the workman. In that case nearly 5 years had been spent in pursuing the remedy before the Central Administrative Tribunal. On the peculiar facts of the case this Court ordered reinstatement but restricted the back wages to 50%.

H 7. It is to be noted that at the time of issuance of notice on 8.7.2003 interim stay was granted. The interim order of stay was made absolute

subsequently. It has been specifically pleaded that purported industrial dispute was raised after 9 years of alleged termination and a demand notice was issued in December, 1997. The alleged order of termination was passed in February, 1989. The delay was occasioned to a considerable extent due to pendency of Civil Suit and the appeal. In view of these peculiar facts, it would be appropriate to modify the order passed by the Labour Court as affirmed by the High Court to the following effect:

1. Instead of reinstatement and/or payment of back wages for a certain period let the appellants pay a sum of Rs.60,000/- to the respondent. This shall be in full and final settlement of the claims of the respondent.
 2. Direction for reinstatement stands vacated. The payment shall be made within a period of eight weeks from today by a demand draft drawn in the name of respondent of any Nationalised Bank.
 3. If the amount is not paid within the stipulated time the order of the Labour Court as affirmed by the High Court shall stand revived.
8. Appeal is accordingly disposed of. There will be no order as to costs.

N.J.

Appeal disposed of.