IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 01.08.2023
Pronounced on:10.08.2023

OWP No.1319/2016

MANAGING DIRECTOR
JK HANDICRAFTS **...PETITIONER(S)**

Through: - Mr. Raees-ud-Din Ganai, Dy. AG.

Vs.

AGA SYED MUSTAFA & ANR. **…RESPONDENT(S)**

Through: - Mr. M. A. Qayoom, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR,JUDGE

JUDGMENT

1) The petitioner has challenged award dated 27.06.2016 passed by respondent No.2, whereby termination of services of respondent No.1 has been quashed and the petitioner has been directed to reinstate the said respondent forthwith.

2) The facts emanating from the pleadings of the parties are that in the year 1982, respondent No.1 was engaged as Assistant Craftsman for a period of 18 months by the petitioner in terms of engagement order dated 18.10.1982. Initially respondent No.1 was posted at Aalikadal and later on he was transferred to Training Centre, Wathoora. It seems that Training Centre, Wathoora, was closed on 20.10.1983 and the staff posted in the said Centre was directed to report to the head office of the petitioner Corporation. It is claimed by the petitioner that respondent No.1 instead of reporting at the head office, abandoned his services and

absconded whereas stand of respondent No.1 is that he did join the head office but was not given further posting orders whereas his other colleagues were given further posting orders. As per the case of respondent No.1, he went on making repeated requests to the authorities of the petitioner Corporation to adjust him as had been done in the case of his other colleagues who were engaged in terms of order dated 20.10.1983 but despite these requests, he was not adjusted. Ultimately, respondent No.1 served a legal notice dated 17.12.1988 upon the petitioner along with an application requesting therein that his case be considered on sympathetic basis. The petitioner is stated to have responded to the said legal notice in terms of its letter dated 25th May, 1989.

3) It seems that respondent No.1 preferred an application before the Assistant Labour Commissioner, Srinagar, seeking initiation of conciliation proceedings. The Assistant Labour Commissioner (Conciliation Officer), while observing that services of respondent No.1 have been terminated without adhering to the relevant provisions contained in the Industrial Disputes Act (hereinafter referred to as "the Act"), sent a failure report to the State Government for making reference of the dispute to the Industrial Tribunal. While sending his report, the Conciliation Officer framed the following two issues for adjudication by the Tribunal:

(1) Whether the respondent management of the concerned Corporation was within their rights to arbitrarily terminate the petitioner from his services?

(2) If so, whether the petitioner is entitled to reinstatement along with back wages and any other relief in this behalf?

4) The Government of J&K vide SRO 54 dated 01.02.1990, made a reference of industrial dispute to respondent No.2/Tribunal for adjudication. While doing so, the following terms of reference were formulated:

(1) Whether the action of the aforesaid Management in terminating the services of the aforesaid employee is justified?

(2) If not, to what relief the said employee is entitled to?

5) Initially the reference was decided by respondent No.2/Tribunal in terms of award dated 17.06.1998. The Tribunal, while relying upon the provisions contained in Clause (bb) of Section 2 (oo) of the Act, came to the conclusion that there was no provision for renewal of the contract of employment between respondent No.1 and the petitioner upon its expiry, as such, non-compliance with the provisions contained in Section 25F of the Act shall not vitiate or nullify the order of termination of respondent No.1. The Tribunal held that respondent No.1 herein has no substantial claim to seek any sort of re-employment in the petitioner Corporation. Accordingly, the reference was answered against respondent No.1 and in favour of the petitioner Corporation.

6) The aforesaid award came to be challenged before this Court by respondent No.1 by way of a writ petition bearing SWP No.1375/98.

This Court vide its judgment dated 6th April, 2010 quashed the award passed by the Tribunal and remitted the matter back to the Tribunal for deciding the same afresh after giving an opportunity of hearing to both the sides. While directing so, this Court observed that applicability of Clause (bb) to Section 2(oo) of the Act to the instant case needs to be looked into.

7) It is in the above circumstances that the matter again landed before respondent No.2/Tribunal. Vide the impugned award, the Tribunal has answered the reference in favour of respondent No.1 by holding that his termination from service is illegal and that he is entitled to reinstatement with notional benefits.

8) The petitioner has challenged the impugned award on the grounds that the Tribunal has failed to appreciate the fact that respondent No.1 had voluntarily abandoned his service and that it was not a case of retrenchment. It has been further contended that as per the provisions contained in Clause (bb) of Section 2(oo) of the Act, non-renewal of contract of employment between the employer and the workman, where there is no condition regarding renewal of the contract of employment, does not amount to termination of service that would entail compliance of provisions contained in Section 25F of the Act. According to the petitioner the observation of the Tribunal that the amendment whereby Clause (bb) has been added to Section 2(oo) of the Act is applicable only to the State of Andhra Pradesh is factually

incorrect and because of this misconception, a grave error has been committed by the Tribunal while passing the impugned award.

9) I have heard learned counsel for the parties and perused the record of the case.

10) The first contention that has been raised by learned counsel for the petitioner to impugn the award passed by the learned Tribunal is that respondent No.1 voluntarily abandoned his services, inasmuch as he did not join the head office after the Training Centre, Wathoora, was closed. It has been submitted that respondent No.1 approached the petitioner Corporation for his reinstatement only in the year 1988 after sleeping over the matter for about five years. It has been submitted that the conduct of respondent No.1 clearly indicates that he had abandoned the services voluntarily.

11) If we have a look at the record of the Tribunal, it emerges that respondent No.1 was appointed on contract basis as Assistant Craftsman along with 24 more persons for a period of 18 months and his service was purely temporary in nature terminable at any time even before the expiry of the said period without any formal notice and without assigning any reason. It is admitted case of the parties that the Training Centre at Wathoora, where respondent No.1 was last posted, was closed down on 20th October, 1983 i.e., well before the period of contractual service of respondent No.1 was to expire. It is also admitted case of the parties that respondent No.1 and his other colleagues were asked by the petitioner Corporation to report to the head office. There

is no dispute to the fact that other persons who were appointed along with respondent No.1 were later on adjusted in the petitioner Corporation and it is only respondent No.1 who was left out.

12) Respondent No.1 claims that he kept on attending the head office and requesting the authorities to issue adjustment orders in his favour but his requests fell on deaf ears, which compelled him to serve a legal notice upon the petitioner Corporation in the year 1988. This fact is being denied by the petitioner.

13) When we peruse the evidence that has been led by the parties before the Tribunal on this issue, it comes to the fore that the statement of respondent No.1 as also his witnesses which include one of the employees of the petitioner Corporation to the effect that he continued to make requests to the authorities for orders of posting, has not been shaken in the cross-examination. As against this, the petitioner Corporation has not produced the attendance register to show that respondent No.1 was not attending the head office. The witnesses produced by the petitioner Corporation before the Tribunal have stated that they have no personal knowledge about the fact whether or not respondent No.1 was attending the head office.

14) Although this Court in exercise of its writ jurisdiction cannot undertake the exercise of appreciation of evidence led before the Tribunal but then this Court can certainly go into the question as to whether or not the finding of fact recorded by the Tribunal on this aspect of the matter is based upon any evidence. If it is found that the

finding recorded by the Tribunal is based upon no evidence or that the Tribunal has erroneously admitted inadmissible evidence while recording the finding, the Writ Court can analyze the evidence recorded by the Tribunal to this extent. In this context, I am supported by the ratio laid down by the Supreme Court in the case of **Harjinder Singh vs. Punjab State Warehousing Corporation,** (2010) 3 SCC 192.

15) In the instant case, as already noted, the finding of the Tribunal that respondent No.1 had repeatedly made representations to the petitioner Corporation for issuing orders of his posting, is certainly based upon evidence on record in the shape of the statements of respondent No.1 and his witnesses. The said finding, therefore, does not deserve to be interfered with by this Court in exercise of its writ jurisdiction. Thus, it can safely be stated that respondent No.1 has not voluntarily abandoned his services but it was the action/omission of the petitioner Corporation of not issuing the orders of his adjustment that prevented him from discharging his functions.

16) It is an admitted case of the petitioner Corporation that no order of termination was issued by it against respondent No.1 and obviously the provisions of Section 25F of the Act were not followed but the stand of the petitioner Corporation is that there was no necessity of issuing termination order because as per the terms of engagement of respondent No.1, his services would have otherwise come to an end after one and a half years because there was no stipulation with regard to renewal of

the contract of his service. In this regard reliance has been placed upon the provisions contained in Clause (bb) of Section 2 (oo) of the Act.

17) The learned Tribunal has discarded the aforesaid contention of the petitioner Corporation on the ground that the aforesaid provision is applicable only to the State of Andhra Pradesh and that the same was not applicable to the erstwhile State of Jammu and Kashmir. The finding of the Tribunal in this regard is palpably incorrect for the reason that the Industrial Disputes Amendment Act (49 of 1984), by virtue of which Clause (bb) has been incorporated in Section 2(oo) of the Act, is applicable to whole of India and is not confined to State of Andhra Pradesh. By virtue of Clause (bb) of Section 2(oo) an additional exception has been carved out to the definition of 'retrenchment' and it provides that termination of the service of the workman as a result of non-renewal of contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein would not constitute retrenchment.

18) If we apply Clause (bb) of Section 2(oo) of the Act to the facts of the instant case, the petitioner Corporation may be right in contending that the contract of employment of respondent No.1 being valid for a specific period with a stipulation that it can be terminated at any time before the expiry of the said period without any reason and without any notice and, as such, instant case is covered by the exception (bb) to the definition of "retrenchment" as contained in Section 2(oo)

of the Act but then the amendment whereby Clause (bb) has been incorporated in the Act has become operational with effect from 18.08.1984.

19) Respondent No.1, as per the facts established before the Tribunal, was not given posting orders after the closure of Training Centre at Wathoora on 20.10.1983, meaning thereby that the event which gave rise to the dispute between the petitioner and respondent No.1 has taken place well before coming into effect of the amendment whereby Clause (bb) was incorporated in the Act. Even if we take the date of expiry of the term of engagement of respondent No.1 into account, still then the provisions contained in Clause (bb) would not become applicable to his case. Therefore, in the case of respondent No.1, for the purpose of determination of the issue as to whether or not the action of the petitioner Corporation in not allowing him to discharge his functions after 20.10.1983 would amount to retrenchment has to governed by the definition of 'retrenchment' contained in unamended Section 2(oo) of the Act, which at the relevant time provided as under:

> *"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*
>
> *(a) voluntary retirement of the workman; or*
>
> *(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.*
>
> *(c)termination of the service of a workman on the ground of continued ill-health"*

20) The Supreme Court in the case of **State Bank of India vs. Shri N. Sundara Money,** AIR 1976 SC 1111, while interpreting the afore-

quoted unamended provisions of Section 2(oo) of the Act, observed that the expression 'for any reason whatsoever' that has been used in the said provision is very wide and almost admitting of no exception. It would be apt to reproduce the following observations of the Supreme Court made in the said case:

> *"A break-down of s. 2(oo) unmistakably expands the semantics of retrenchment. 'Termination... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is-has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master of the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of s.25F and s.2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from s.25F(b) is inferable from the proviso to s. 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract s. 25F and automatic extinguishment of service by effluxion of time cannot be sufficient.*

21) From a perusal of the aforesaid analysis of the law on the subject, it is clear that as per the definition of retrenchment as it stood at the relevant time, termination of services of a workman for any reason whatsoever excepting on account of voluntary retirement of the workman, retirement of the workman on reaching the age of

superannuation or termination of service of a workman on the ground of his ill health, every situation of cessation of service of a workman would come within the embrace of the definition of retrenchment. In the instant case also, even though there is no specific order of termination issued by the petitioner Corporation but having regard to the conduct of the said Corporation in not allowing respondent No.1 to be posted at one of its centres as was done in respect of his other colleagues would certainly amount to retrenchment.

22) It has been contended by learned counsel for the petitioner that the claim of respondent No.1 is stale as he has sought reference of the dispute after about five years, as such, the same could not have been referred to the Tribunal. In this regard, it is to be noted that the Supreme Court has, in the case of **Prabhakar vs. Sericulture Department,** (2015) 15 SCC 1, held that the words 'at any time' used in Section 10(1) of the Act do not admit of any limitation in making any order of reference and laws of limitation are not applicable to the proceedings under the Act. The Court further held that if it is found that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief.

23) Relying upon the aforesaid judgment of the Supreme Court, a Division Bench of the High Court of Himachal Pradesh has, in the case of **Roop Singh vs. The Executive Engineer, H.P. PWD,** 2019(2) Shim LC 645, allowed the claim of a workman who had issued notice of demand after around twelve and a half years of the retrenchment.

24) For the foregoing discussion, it is clear that the manner in which respondent No.1 was not adjusted by the petitioner Corporation after the Centre at Wathoora was closed down amounts to his retrenchment. Admittedly, the petitioner Corporation has not fulfilled the requirement of Section 25F of the Act while putting an end to the services of respondent No.1. Therefore, the Tribunal was well within its jurisdiction to direct reinstatement of respondent No.1. Accordingly, I do not find any ground to interfere in the impugned award passed by the learned Tribunal. The writ petition lacks merit and is, therefore, dismissed.

(Sanjay Dhar)
Judge

Srinagar
10.08.2023
"Bhat Altaf, PS"

Whether the order is speaking: ***Yes/No***
Whether the order is reportable: ***Yes/No***