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KRISHAN SINGH

v.

EXECUTIVE ENGINEER, HARYANA STATE
AGRICULTURAL MARKETING BOARD, ROHTAK
(HARYANA)

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(Civil Appeal No. 2335 of 2010)

MARCH 12, 2010

[HARJIT SINGH BEDI AND A.K. PATNAIK, JJ.]

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Industrial Disputes Act, 1956:

ss. 25F, 11-A – Termination without notice – Labour Court held that termination was illegal and directed reinstatement with 50% back wages – High Court set aside award of Labour Court and instead directed employer to pay compensation of Rs.50,000/- to the workman – Justification of – Held: Not justified – Labour Court took into consideration evidence on record and settled law while passing award – The decision of High Court had no basis.

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Appellant was working as a daily wager under respondent from 1.6.1988. His services were dispensed with in December, 1993. He served notice on respondent but did not receive response. State Government referred the dispute to Labour Court. The Labour Court passed an award holding that the appellant had admittedly completed 267 days from 01.06.1988 to 30.04.1989 and his services were terminated without any notice and in violation of Section 25F of the Industrial Disputes Act and, therefore he was entitled to be re-instated in his previous post with continuity of service and 50% back wages from the date of demand notice, i.e. 30.12.1997. Respondent filed writ petition before High Court. High Court allowed the same and directed the respondent to pay compensation of Rs.50,000/- to the appellant. Hence the appeal.

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Allowing the appeal, the Court

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HELD: 1. Section 11A of the Industrial Disputes Act clearly provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct re-instatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India should not interfere with the same, except on well-settled principles laid down for a writ of certiorari against an order passed by a Court or a Tribunal. [Para 8] [350-D-H; 351-A]

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Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr. (2008) 1 SCC 575; *Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.* (2008) 4 SCC 261, held inapplicable.

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2. In the present case, the respondent had not taken any stand before the Labour Court in his objections that the post in which the workman was working was not sanctioned or that his engagement was contrary to statutory rules or that he was employed elsewhere or that

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A there was no vacancy. In the absence of any pleadings, evidence or findings on any of these aspects, the High Court should not have modified the Award of the Labour Court directing re-instatement of the appellant with 50% back wages and instead directing payment of
B compensation of Rs.50,000/- to the appellant. [Para 11] [352-A-C]

Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1, distinguished.

C *Harjinder Singh v. Punjab State Warehousing Corporation JT 2010 (1) SC 598, referred to.*

Case Law Reference:

D	(2008) 1 SCC 575	held inapplicable	Para 4
	(2008) 4 SCC 261	held inapplicable	Para 4
	(2006) 4 SCC 1	distinguished	Para 5
	JT 2010 (1) SC 598	referred to	Para 7

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2335 of 2010.

From the Judgment & Order dated 9.12.2008 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 5257
F of 2007.

Shekhar Prit Jha for the Appellant.

Randhir Badhram, B.S. Sharma, P.D. Sharma for the
G Respondent.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. Leave granted.

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AGRICULTURAL MARKETING BOARD [A.K. PATNAIK, J.]

2. The appellant worked as a daily wager under the respondent from 01.06.1988. His services were dispensed with in December, 1993. He served a notice of demand dated 30.12.1997 on the respondent contending that his services were terminated orally without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (for short "the Act") and that he may be re-instated in service with full back wages from the date of illegal termination and he may be regularized according to Government policy. The respondent did not respond to the demand made by the appellant and by order dated 23.07.1999, the State Government referred the dispute under Section 10 of the Act to the Labour Court. The appellant and the respondent filed their claim-statement and the objection respectively before the Labour Court, Rohtak, and led evidence in support of their respective cases. Thereafter, the Labour Court passed the Award dated 18.07.2006 holding that the appellant had admittedly completed 267 days from 01.06.1988 to 30.04.1989 and his services were terminated without any notice or notice pay and without payment of retrenchment compensation and the termination was, therefore, in violation of Section 25F of the Act and the appellant was entitled to be re-instated in his previous post with continuity of service and 50% back wages from the date of demand notice, i.e. 30.12.1997.

3. The respondent challenged the Award of the Labour Court before the High Court of Punjab and Haryana in a writ petition registered as C.W.P. No.5257 of 2007 and by order dated 09.12.2008, the High Court allowed the writ petition, set aside the Award dated 18.07.2006 of the Labour Court and directed the respondent instead to pay compensation of Rs.50,000/- to the appellant within a period of four months. Aggrieved by the order dated 09.12.2008 of the High Court, the appellant has filed this appeal.

4. Shri Shekhar Prit Jha, learned counsel for the appellant, submitted that the High Court has relied on the decisions of this

A Court in *Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.* [(2008) 1 SCC 575] and *Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.* [(2008) 4 SCC 261] for setting aside the Award of the Labour Court. He submitted that in *Mahboob Deepak's* case, the workman was removed for financial irregularities, but the appellant in the present case was not removed for financial irregularities. He submitted that *Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.* (supra) was not a case of violation of Section 25F of the Act as in the present case. He submitted that the two decisions on which the High Court has relied upon to set aside the Award of the Labour Court therefore do not apply to the facts of the present case. He submitted that it is now well-settled that if pre-conditions for retrenchment of a workman who has worked for more than a year stipulated in Section 25F of the Act are not complied with, the termination of the service of the workman is illegal. He submitted that the Labour Court having found that these pre-conditions had not been complied with in the case had rightly directed re-instatement of the appellant with 50% back wages.

E 5. Shri Randhir Badhram, the learned counsel for the respondent, on the other hand, submitted that the High Court has rightly set aside the Award of the Labour Court relying on the decisions of this Court in *Ghaziabad Development Authority and Another v. Ashok Kumar & Anr.* (supra) and F *Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.* (supra). He also relied on *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* [(2006) 4 SCC 1] in support of his submission that this is not a fit case where the appellant could be regularized in service.

G 6. The only question that we have to decide in this case is whether the High Court was right in setting aside the Award dated 18.07.2006 of the Labour Court directing reinstatement of the appellant with 50% back wages and directing instead payment of compensation of Rs.50,000/- to the appellant. We H

find that the dispute that was referred to by the State Government under Section 10 of the Act to the Labour Court was: "whether the termination of the services of the appellant was justified and if not, to what relief he was entitled to?" As per the claim-statement filed by the appellant before the Labour Court, he was appointed by the respondent as a daily wager against a regular post on 01.06.1988 under the Junior Engineer at Meham and the appellant worked there for different periods until the respondent terminated his services in December, 1993 without any notice and without complying with the provisions of Section 25F of the Act. The respondent in its objections did not take a plea that the engagement of the appellant was either against a post which was not sanctioned or contrary to the statutory rules and admitted in the objections that the services of the appellant were engaged for different periods during 1988-1989, 1989-1990, 1990-1991 and 1992-1993. The respondent also furnished a statement of the works in which the appellant was engaged during the years 1988-1989 and 1989-1990, which was marked as Exb. MW-1. Taking into consideration Exb. MW-1, the Labour Court held that the appellant has completed 267 days from 1.6.1988 to 30.4.1989 and without any notice or notice pay and without retrenchment compensation. In the relief portion of the Award, the Labour Court held that as the services of the appellant had been terminated illegally, he was entitled to be re-instated in his previous post with continuity of service and 50% back wages from the date of demand notice, i.e. 31.12.1997.

7. In a recent judgment of this Court in *Harjinder Singh v. Punjab State Warehousing Corporation* [JT 2010 (1) SC 598], the Labour Court, Gurdaspur, by its Award directed re-instatement of the workman with 50% back wages, but the Award of the Labour Court was modified by a learned Single Judge of the Punjab and Haryana High Court in the writ petition and this Court has held that the order of the learned Single Judge of the High Court was liable to be set aside only on the ground that while interfering with the Award of the Labour Court,

- A the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution. Learned Brother G.S. Singhvi, J., in his opinion, has observed that while exercising jurisdiction under Articles 226 and/or 227
- B of the Constitution, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained
- C in Part IV of the Constitution including Articles 38, 39(a) to (e), 43 and 43A thereof. Learned Brother Asok Kumar Ganguly, J. agreeing with learned Brother G. S. Singhvi, J., has also observed that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory
- D goal and not to frustrate it.

8. Section 11A of the Act clearly provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the
- E adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if
- F any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to discharge or
- G dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct re-instatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles
- H 226 and 227 of the Constitution of India will not interfere with

the same, except on well-settled principles laid down by this Court for a writ of certiorari against an order passed by a Court or a Tribunal. A

9. The High Court, however, has relied on the decision of this Court in *Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.* (supra) and on reading of the aforesaid decision, we find that this Court in the aforesaid decision has mentioned the following factors, which are relevant for determining whether an award of re-instatement should or should not be passed:- B

- (i) whether in making the appointment, the statutory rules, if any, had complied with; C
- (ii) the period he had worked;
- (iii) whether there existed any vacancy; and D
- (iv) whether he obtained some other employment on the date of termination or passing of the award." E

This Court further held in the aforesaid decision that in the light of these principles the relief of re-instatement granted by the Labour Court in that case was wholly unsustainable and has accordingly directed payment of a sum of Rs.50,000/- by way of damages to the workman with interest at the rate of 9% per annum. F

10. The High Court has also relied on the decision of this Court in *Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.* (supra) and on reading of the aforesaid decision we find that the contention of the management before the Labour Court was that the post, in which the workman was working in that case, was not sanctioned after 31.03.1990 and this was not disputed by the workman and this Court held that if there did not exist any post, the Labour Court should not have directed re-instatement of the workman in service. G

11. The aforesaid two decisions of this Court in *Mahboob* H

- A *Deepak v. Nagar Panchayat, Gajraula & Anr.* (supra) and
B *Ghaziabad Development Authority & Anr. v. Ashok Kumar &*
C *Anr.* (supra) have no application to the facts in this case. In the
present case, the respondent has not taken any stand before
the Labour Court in his objections that the post in which the
workman was working was not sanctioned or that his
engagement was contrary to statutory rules or that he was
employed elsewhere or that there was no vacancy. In the
absence of any pleadings, evidence or findings on any of these
aspects, the High Court should not have modified the Award
of the Labour Court directing re-instatement of the appellant
with 50% back wages and instead directed payment of
compensation of Rs.50,000/- to the appellant.

12. The decision of this Court in *Secretary, State of*
D *Karnataka & Ors. v. Umadevi (3) & Ors.* (supra) cited by the
counsel for the respondent relates to regularization in public
employment and has no relevance to an Award for re-
instatement of a discharged workman passed by the Labour
Court under Section 11A of the Act without any direction for
regularization of his services.

- E 13. In the result, we allow this appeal and set aside the
impugned order dated 09.12.2008 of the High Court of Punjab
and Haryana in C.W.P. No.5257 of 2007 and direct that the
appellant will be re-instated as a daily wager with 50% back
F wages forthwith. No costs.

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Appeal allowed.