

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
WRIT PETITION NO. 68-199-1999

PETITIONER :

Pragatisheel Engg. Shramik
Sangh

VERSUS

RESPONDENTS:

Simplex Engg. & Foundry Unit III,
Tedesara, Rajnandgaon
& Another.

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JABALPUR,

Counsel for the petitioner.

Dated:

PETITIONER :

Pragatisheel Engg. Shramik Sangh
Labour Camp, Jamul,
Distt. Durg (M.P.)

VERSUS

RESPONDENTS :

1. Simplex Engg. Foundry Unit III,
Tedesera , Rajnandgaon

2. The State Industrial Court, (M.P.)
HIG-16, Shukarnagar,
Raipur (M.P.)

IN THE MATTER OF ARTICLES 226 & 227 OF
CONSTITUTION OF INDIA

AND

IN THE MATTER OF M.P., INDUSTRIAL RELATIONS ACT, 1960

1. Particulars of the petitioner : As set out in the cause title as petitioner.
2. Particulars of the Respondents: As set out in the cause title as respondents.
3. Particulars of the orders against which the petition is made.

The petitioner is challenging the Award dated 16.10.99 passed by the learned Industrial Court, Raipur Bench in Reference case No. 2/MP/IR/1996. By the impugned award, the Industrial Court held that the termination of the employees mentioned in the Annexure to the reference is bad in law & they deserve the normal relief of reinstatement with full back wages but instead awarded a compensation of Rs.20,000/- (Rs. Twenty Thousand only) in lieu of reinstatement. That Petitioner is aggrieved by the Order of the Industrial Court.

4. Delay in filing Petition, if any, and explanation, if any for it.

There is no delay. The impugned award was passed on 16.10.99.

5. Facts of the case :

1. That the Petitioner Union in 1990-91 raised some demands for workers of the Respondent Employer. Demands were also raised in the respect of the workers of many other Employers/Industrial establishments of the Bhilai Industrial area. It was obviously not liked by the Respondent Employer and eventually to brow-beat the workers, a number of workers including the

workers contained in the Annexure to the order of Reference made by the Govt. were refused to be provided with work. Other Industrialists of Bhilai also behaving in this same style refused to provide work to nearly 4 to 5 thousand workers & therefore the Govt. made 15 separate identical References in Feb. 1993 in respect of each establishment, separately. Before such refusal of work to the workers there were no charges, charge-sheet, no inquiry, no written termination order. Provision relating to Retrenchment as contained in Section 25 F of the I.D. Act were also not complied with.

2. That obviously, Industrial unrest took place. The Industrial dispute was brought to the notice of the Labour Department Authorities & the District Authorities. All the Authorities held a series of meetings to settle the industrial disputes but due to most adamant attitude of the Respondent Employer nothing came out. Under these circumstances, the State Govt. referred the dispute under section 51 of the M.P.I.R. Act. 1960 to the State Industrial Court, Bench Raipur for adjudication in Feb. 1993. It is respectfully submitted that during this period of Industrial unrest i.e. 90-91 to Feb. 93, Sri Shankar Guha Niyogi the Organizing Secretary of the Petitioner Union was murdered in Sep. 91 & 16 workers were killed in the police firing on 1.7.92.

3. The terms of Reference were as under :-

१ क्या वेतन एवं घत्तों के पुनरीक्षण का औचित्य है ? यदि हाँ तो वेतन मढ़गाई घत्ता एवं अन्य घत्तों की क्या योजना होनी चाहिए एवं इस संबंध में नियोक्ता को क्या निर्देश दिए जाना चाहिए ?

२ क्या प्रति वर्ष १५ दिन का माकम्मिक अवकाश, १० दिन का त्यौहाती अवकाश तथा ३० दिन का चिकित्सा अवकाश दिए जाने का औचित्य है ? यदि हाँ तो इस संबंध में नियोक्ता को क्या निर्देश दिए जाना चाहिए ?

३ क्या संसम परिशिद्ध में उल्लेखित एम्पलाईज का सेवा पृथकीकरण बेह एवं उचित है ? यदि नहीं तो नियोक्ता को क्या निर्देश दिए जाना चाहिए ?

4. It was registered as Reference case No. 2 /MPIR/1994. Immediately after the proceeding started, with oblique motive to delay the proceedings, the Respondents Employer raised certain preliminary objection with regard to the maintainability of the Reference itself. The Industrial Court, Raipur Bench referred these objection to be decided by the Division Bench of the Industrial Court. The Division Bench consisting of Hon'ble Justice Shambhoo Singh & Member Judge Shri S.N. Upadhaya rejecting all the objections & found the Reference order made by the Govt. is quite in order. The copy of this order is annexed herewith as Annexure P-1.

Annexure P-1

5. That the Respondent Employer filed Writ Petition No. 1231/1995 in this Hon'ble High Court Indore Bench which was dismissed by Hon'ble Justice N.K. Jain vide order dated 27.9.96. & the Court criticized the conduct of the employer forcing the poor workers in litigation. The relevant paragraph is reproduced hereunder.

"12 It will be thus seen that the petitioners instead of rushing to this Court at this preliminary stage of hearing before the Industrial Court, ought to have waited for its decision in the matter. Needless to add, "the right to life includes the right to livelihood" (see : Olga Tellis' case AIR 1986 SC 180) The petitioner employers who can certainly afford of wait, cannot be

therefore, allowed to exploit jurisdiction to this Court under Art. 226 to avoid decision of issues more vital to the employees."

6. That the Respondent Employer did not stop the litigation for obvious reasons & filed the Letters Patent Appeal. The L.P.A. came to be heard before the Division Bench consisting of Hon'ble Justice R.D. Shukla & Hon'ble Justice J.G. Chitre. They held different views & therefore the matter was placed before another Judge Hon'ble Justice, A.R. Tiwari for opinion Judgement which was passed on 5.12.97. The matter was ultimately decided to be placed before the full Bench. The Full Bench consisting of Hon'ble Justice Khan, Hon'ble Justice Sakrikar & Hon'ble Justice Agrawal upheld the decision dated 27.9.96 passed by the Hon'ble Justice N.K. Jain. The full Bench order is dated 6.4.1999 annexed herewith as Annexure P/2. Although the full Bench was ordered to be constituted on 6.4.98 it was constituted only after the order of the Hon'ble Supreme Court dated 18.2.99 passed in Special leave to Appeal (Civil) No. 737-740/99.

Annexure P/2.

7. That thereafter the Industrial Court delivered its Award on 16.10.1999 annexed herewith as Annexure P/3. It was held in this Award that the Workers are the workers of the Respondent Employer, their cessation of employment is illegal & they are entitled for the normal relief of reinstatement with full back wages in the light of the Apex Court's Judgement 1978 II LLJ 774 (Para 11) SC Hindustan Tin Works case. However denying the normal relief aforesaid it was arbitrarily & illegally moulded to a compensation of shockingly meagre amount Rs. 20000/- only in lieu of the normal relief of reinstatement & back wages. The reasoning & grounds mentioned in the Award for moulding the relief were never a part of the record, never pleaded by any party & were all imaginary & fictitious. In fact the Respondent Employer had never, at no point of time or proceedings, had requested to mould the relief. The Petitioner being highly aggrieved by the part of the Award whereby the normal relief of reinstatement with full back wages has been denied, is preferring this Petition before your Lordships for justice. The Petitioner is also for the fringe benefits contained in item No.1 & 2 of the Terms of Reference which also have been disallowed by the Industrial Court.

Annexure P/3

6. Grounds Urged :

1. That in para 41 and 42 – the Industrial Court has held :
“अतः परिशिष्ट में उल्लिखित व्यक्ति द्वितीय पक्ष से सहायता पाने के पात्र है”
“वैसे तो साधारण नियम यही है कि यदि सेवा समाप्ति को उचित नहीं पाया जाता है तो श्रमिक पुनः स्थापना की सहायता व संपूर्ण पिछला वेतन पाने का पात्र हो जाता है”
2. That therefore once the Industrial Court held that the termination is illegal, the Court ought to have awarded the normal relief of reinstatement with full back wages & there is absolutely no reason to make any arbitrary deviation from it.
3. That once the Industrial Court had held that the termination is illegal, the court should have followed the principles laid down by the Hon'ble Supreme Court in 1978 II LLJ 774 Para 11 (SC) Hindustan Tin Works Vs. Employees :

“Full back wages would be the normal relief & the Party objecting to it must establish the circumstances necessitating departure “.

& accordingly should have awarded the relief of reinstatement with full back wages. By not awarding this relief a grave miscarriage of justice has taken place.

4. That similarly the Industrial Court should have followed 1994 (68) F L R 389MP : D B M P S R T C Vs. Industrial Court in the matter of relief & there was no good reason to deny the normal relief of reinstatement with full back wage.

5. That the Respondent Employer had never pleaded or argued that if the termination is held to be illegal, the normal relief of reinstatement with back wages should be moulded and workmen may be awarded compensation in lieu of reinstatement. In the absence of any pleading, proof, argument or request from the Respondent employer, the Industrial Court's award of compensation of a paltry sum of Rs. 20,000/- in lieu of reinstatement was wholly illegal unjustified & un-called for.

6. That in the absence of any pleadings, proof, arguments or any request from either of the parties to award compensation in lieu of normal relief of reinstatement is not only illegal & unjustified but also without jurisdiction.

7. That the Industrial Court below should have followed the decision of this Hon'ble High Court 1985 MPLSR 4 (MP) : Babulal Sharma Vs. MPEB that compensation in lieu of reinstatement "cannot be ordered unless requested by the party". Moreover as held in AIR 1970 SC 1401 Hindustan Steel Ltd. Vs. A.K. Roy

"Compensation in lieu of normal relief of reinstatement could be awarded only if the circumstances are exceptional & extra ordinary in any particular case".

As respectfully submitted earlier, no such case was even pleaded by the Respondent Employer. Therefore the question of making out or proving such case/circumstances does not arise.

8. That the Industrial Court has committed a patent error in relying upon 1997 MPLSR 658 Tulsi Ram & other Vs. Raja Ram Maize Products. In fact immediately after this reported judgement was pronounced on 17.9.97., the Hon'ble High Court finding an apparent error had reviewed this judgement & in Review/Petition (Misc. Civil Case) No. 885/1997 and passed another judgement dated 7.11.97 which was substituted in the place of reported judgement 1997 MPLSR 658. This judgement dt. 7.11.97 after review had been lost sight of by the Industrial Court & therefore once again grave mis-carriage of justice has taken place. In the reviewed judgement the Hon'ble High Court had deleted the compensation of Rs.17,500/- which option too was granted by the Labour Court to the worker & not to the Employer as has been done in this case by the Industrial Court. In the reviewed judgement dated 7.11.97 the Hon'ble High Court had ordered reinstatement & deleted the compensation. Therefore a patent illegality has taken place as the reliance has been placed by the Industrial Court on a "judgement" of this Hon'ble Court which in fact was no judgement.

9. That the reasoning & the grounds on the basis of which the relief has been moulded are only surmises & conjectures. There is absolutely nothing on record on the basis of which such reasoning could be made. In fact the situation is otherwise. It has come in evidence that the workers are unemployed. The reasoning of the Industrial Court for awarding compensation of Rs.20,000/- only are imaginary & fictitious & have absolutely no basis. Nor there is anything to this effect in the record.

10. That by the impugned award a premium has been paid to the Respondent Employer for its own misdeeds & conduct. It threw the workers on the streets without following any legal proceeding not even for name sake, it snatched the Right to life from the workers & thus made mockery of Article 21 of the constitution. It purposely and malafide indulged in prolonged litigation for over 8 years which in fact was "Covert blackmail through judicial process". 1980 ILLJ 124(SC). To such an Respondent Employer the sympathy shown by the Court below is wholly misplaced.

The ends of justice required that besides the normal relief of reinstatement with full back wages, exemplary penalty should also have been imposed.

11. That alternatively & without prejudice to the submission made above, the award of compensation of Rs.20,000/- only in lieu of relief of reinstatement with full back wages of nearly 8 years is only whimsical. It is against all canons of justice & equity. It has no relation with the settled principles which have been laid down in this behalf. With roughly 10 years average actual service, 6 years average unemployment period & average 15-20 years average future service even with the minimum wages appropriate compensation could not be less than Rs.2.5 lacs per worker.

12. That in exactly similar References cases

Ref. Case No. 7/1996

Kedia Distillery

Bhilai (Para 23)

Ref. Case No. 10/1996

Chhatisgarh Distillery

Kumhari (Para 23)

In which the Industrial Court has arrived at the same findings that termination is illegal & workers are entitled to the normal relief of reinstatement with full back wages, the Industrial Court itself has awarded reinstatement with 66% back wages. In this case which is exactly similarly situated so far as the findings are concerned, there could not be any reason whatsoever to cause discrimination in the matter of relief. In this case also the Court should have granted at least the same relief as has been granted in the 2 cases of the Distilleries referred above & could not have made any unjustified discrimination.

13. That the fringe benefits claimed in item No.1 & 2 of the Terms of reference were the minimum. The Industrial Court has disallowed them without any justification & without properly appreciating the record & the entire circumstances & therefore this part of the impugned award is also illegal & unjustified.

RELIEF SOUGHT :

In view of the facts and grounds mentioned above the Petitioner respectfully prays for the following relief :

The impugned Award Annexure P/3 may kindly be suitably modified & the concerned workers may kindly be directed to be reinstated with full back wages & other consequential benefits.

That the fringe benefits contained in item 1 & 2 of the Terms of Reference may kindly be allowed

Any other order that the Hon'ble Court may deem fit in the circumstances of the case may please also be passed. Appropriate penalty & interest may kindly also be awarded.

INTERIM ORDERS :

That petitioner respectfully prays that since there is a prima facie strong case of reinstatement & full back wages & that since the workers are suffering the torture of unemployment for the last nearly 8 years, it is respectfully prayed that an interim relief of Rs.2,000/- per month may kindly be awarded per worker till further orders from this Hon'ble Court.

DETAILS OF REMEDIES EXHAUSTED :

There is no remedy much less any statutory remedy under any Act applicable to the case.

10. MATTER NOT PENDING IN ANY OTHER COURT :

The Petitioner declares that it has not filed any Petition, nor filed any case challenging the impugned award of the Industrial Court in any Court of Law or in any tribunal.

11. LIST OF DOCUMENTS AS PER RULE 1 (C):

1. Order dated 31.05.1995
Passed by the Division Bench of
Industrial Court (M.P.) P/1
2. Order dated 06.04.1999
Delivered by the full Bench
Of the Hon'ble High Court Indore Bench P/2
3. Award dated 16.10.1999
Passed by the Industrial Court
Raipur Bench P/3

12. LIST OF ANNEXURE/DOCUMENT AS PER RULE 1(d):

An Index indicating the page number of the Writ Petition, Affidavit, Document or Annexure is given at the first page of paper Book.

An Affidavit in support of this Petition is filed herewith.

JABALPUR

Dated : _____

COUNSEL FOR THE PETITIONER