INDIAN LABOUR JURISPRUDENCE: IS IT IMPERATIVE TO GRANT THE WORKMAN RE-INSTATEMENT ALONGWITH BACK WAGES WHEN TERMINATION OF SERVICES OF A WORKMAN IS ILLEGAL? : A REVIEW.

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Prelude: We have seen that when the services of a workman is terminated without complying with Section 25-F of the Industrial Disputes Act, 1947 or Uttar Pradesh Industrial Disputes Act, 1947 (Section 6N) the Labour Courts, as a matter of Course, grant reinstatement in services along with wages irrespective of the nature of the dispute. Recently, a case of this nature came up before the Hon'ble Supreme Court in the case of Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta [2008 (4) LLN 634], wherein the workman raised an industrial dispute after 10 years of termination of his services but the Labour Court granted the workman reinstatement, of course, without back-wages. The award of the Labour Court was affirmed by the High Court but set aside by the Supreme Court.

However, before going into the details of the case, I think it would be in fairness and fitness of the subject to outline the proviso of Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947 which is almost identical to Section 25 F of Industrial Disputes Act, 1947 (Central Act 14 of 1947).

Section 6N, Conditions precedent to retrenchment of workman:-

No workman employed in any Industry who has been in service for not less than one year under an employer shall be retrenched by the employer until:-

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice: Provided that no such notice shall be necessary if the retrenchment is under an agreement which specified a date of the termination of service.

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government.

Facts of the Case

Shri Laxmi Kant Gupta was appointed as a porter coolie on 16 January, 1984 and worked till 15 February, 1986 and that his service was then terminated without complying with the provisions of S. 6N of the U.P. Industrial Disputes Act. Shri Gupta challenged his termination of service after a delay about 10 years by approaching the jurisdictional conciliation officer only on 14 September, 1995. The Labour Court observed that no reason has been given for this inordinate delay of about 10 years in raising this dispute, and on this ground the Labour Court denied back-wages to the respondent and

granted only reinstatement on the ground that S. 6N was violated. The award of the Labour Court was affirmed by a learned single Judge.

Aggrieved by the award of the Labour Court, as affirmed by the High Court, the Employer, Uttar Pradesh State Electricity Board ("**UPSEB**") approached the Supreme Court by filing an SLP (Civil) No. 19437 of 2006.

The Pleadings

The Management of UPSEB urged the following before the Hon'ble Supreme Court:
(i) that Shri Gupta was never given a regular appointment,
(ii) that Shri Gupta challenged his termination of services after a delay of about 10 years.

On the contrary, it was urged on behalf of the workman that the point of delay in raising the industrial dispute was not taken by the appellant in its written statement before the Labour Court, and hence the said point cannot be urged here

Observation of the Supreme Court:-

The Hon'ble Supreme Court, while dealing with the case, stated that without going into the submission it is of the view that the impugned judgment of the learned single judge of the High Court as well as the award of the Labour Court granting reinstatement deserves to be set aside.

The Hon'ble Supreme Court relied on the following decisions:

(1) Uttar Pradesh State Brassware Corporation Ltd. and another v. Uday Narain Pandey [2006 (1) LLN 25].

While the earlier view of the Court was that if an order of the termination was found to be illegal, normally the relief to be granted should be reinstatement with full back wages. However, as noted in the various decisions referred to in the above descisions, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The Hon'ble Supreme Court, after discussing various earlier decisions held that the relief to be granted is discretionary and not automatic. It was also ruled that a person is not entitled to get something only because it's subsequent decisions, probably having regard to the charges in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence there is no such principle that for an illegal termination of the service the normal rule is reinstatement with back-wages and instead the Labour Court can award compensation.

(2) Haryana State Electronics Development Corporation Ltd. v Mamni [2006(109)FLR1000]

In this case the services of the respondent had been terminated on regular basis and she had been re-appointed after a gap of one or two days. Such a course of action was adopted by the appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947 , therefore, is not attracted in the instant case.
However, indisputably, the respondent was appointed on an ad hoc basis. She, although qualified to hold the post of Junior Technician, when the advertisement had been issued for filling up the said post, did not apply. Therefore, the services of the respondent was terminated as far back as in 1992. Even if she is reinstated in her service on ad hoc basis, her service cannot be regularized in view of a recent Constitution Bench decision of this court in Secretary State of Karnataka and others v. Uma Devi and others [2006(109)FLR826]. Furthermore, she had absented herself for a period of 19 days from 20-1-1992 to 7-2-1992 and for a period of 11 days from 17-2-1992 to 27-2-1992.

At paragraph No. 11 the Hon'ble Supreme Court stated as follows:

"We, therefore, are of the view that in the peculiar facts and circumstances of this case, interests of the justice would be sub-served if in the place of reinstatement with back-wages, a lump sum amount is directed to be paid by way of compensation. This order is being passed keeping in the view the fact that the respondent has not worked since 1992. The post on which she may have been working must have also been filled up.

Para: 13

The court in a number of decisions have categorically held that the relief of reinstatement with full back-wages is not to be given automatically. Each case must be considered on its own merit."

The Observation of the Supreme Court in the Instant Case:

Relying on the foregoing case-law, the Hon'ble Supreme Court has stated as follows at paragraph No. 11 of the judgment of the instant case:

"Thus, it is evident that there has been a shift in the legal position which has been modified by this court and now there is no hard and fast principle that on the termination of service being found to be illegal, the normal rule is reinstatement with back-wages. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case".

The Final Verdict

The find verdict in the instant case was as follows:-

"Hence, while we are not inclined to quash the reference order on the ground of the delay, we allow this appeal and set aside the impugned judgment and order of the High Court as well as the Labour Court to the extent that they grant reinstatement to the respondent, and we hold that in this case compensation should have been granted instead of reinstatement. In this case the amount already paid to the respondent is more than sufficient compensation for his illegal termination of service and no further amount now to be paid to him. However what has already been paid to him should not be recovered from him".

The Assumptions

1. In a case pertaining to the termination of services of a workman grant of back-wages is neither imperative nor automatic.

2. Even if a termination of services of a workman is found to be illegal, there is no power vested with the Labour Court or Industrial Tribunal to grant back wages. The Labour Court/Industrial Tribunal can consider compensation instead.

3. The maxim of 'back-wages' cannot be permitted as the principle of "no work no pay" applies to the case.

4. In course of time, there has been a shift in the legal position pertaining to back wages.

This phenomenon can be called "Law in a Changing Society" as law is an instrument of Social Change, mobility/stability and control.

For any questions or clarifications, feel free to revert to us at the following address.

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