

MINISTRY OF TEXTILE

v.

MURARI LAL GUPTA & ANR.
(Civil Appeal No. 2509 of 2008)

APRIL 7, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Labour Laws – Reference of Industrial dispute – Pursuant to order of High Court in a writ petition – Tribunal directing reinstatement with back wages – After passing of the award, scheme under which the employee was employed, was abandoned – Implementation of award sought from High Court – Allowed by Single Judge and also by Division Bench of High Court – On appeal held: Direction of reinstatement and back wages set aside – In the peculiar facts of the case, direction issued to pay the employee Rs. 50,000/- as full and final settlement.

Industrial Disputes Act, 1947 – s. 10 – Reference under – Decision for – Held: It is within domain of the Government to decide the worth of a case for reference – Court should not direct reference to be made except in exceptional cases.

Respondent, appointed as a 'Chowkidar' with the appellant, filed a representation for regularization. It was rejected on the ground that the respondent was over-aged. He, thereafter served a notice seeking his reinstatement. He also filed applications seeking payment of difference in salary and for overtime wages. Conciliation proceedings failed. Application seeking reference of industrial dispute was rejected. He approached High Court in writ petition. Pursuant to the judgment of High court, reference of industrial dispute was made to Industrial Court. Industrial Tribunal directed his reinstatement with back wages. Thereafter, the scheme

A under which the respondent was appointed, was abandoned. Respondent-employee filed writ petition seeking implementation of the order of the Tribunal. Employer-appellant also filed writ petition. Single Judge of High court dismissed the writ petition of the employer and allowed that of the employee. Employer filed writ appeal (LPA) against both the orders. One LPA was dismissed as withdrawn while the other was dismissed on merits. Hence the present appeal.

C Appellant contended that direction for reinstatement was not correct, and that writ petition wherein order directing reference was passed was belated.

Partly allowing the appeal, the Court

D HELD: 1. Except in certain unexceptional cases courts should not direct reference to be made. It is within the domain of the Government to decide as to in which case reference is to be made and in which case reference is not to be done. The reference was apparently made on the ground that the High Court had directed a reference to be made. That was not factually correct. The High Court directed reconsideration of the matter and did not in fact direct reference to be made. [Para 4] [1238-G; 1239-A]

F 2. In the peculiar facts of the case that the project has already been closed and that filing of the writ petition was belated, it is directed that the respondent be paid an amount of Rs.50,000/- in full and final settlement of his claim. The direction for reinstatement and/or back wages stands set aside. [Paras 4 and 7] [1239-A, B, F, G]

G *State of M.P. and Ors. v. Arjunlal Rajak* 2006 (2) SCC 711; *Municipal Council, Sujapur v. Surinder Kumar* 2006(5) SCC 173 – relied on.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2509 of 2008.

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From the Judgment and Order dated 24.3.2005 of the High Court of Delhi at New Delhi in L.P.A. No. 1082/2004 A

D.S. Mahra for the Appellant.

Anitha Shenoy for the Respondents.

The Judgment of the Court was delivered by B

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order of a Division Bench of the Delhi High Court dismissing the appeal filed by the appellant. Challenge in the appeal was to the judgment and order dated 21.9.2004 passed by a learned Single Judge in Writ Petition (Civil) No. 4662 of 2002. C

3. Background facts as projected by the respondent in the Writ Petition filed by him before the High Court are essentially as follows: D

Respondent was appointed as Chowkidar in Carpet Weaving Training Center, Bharatpur, Rajasthan on 24.8.1982. On 26.3.1985 respondent filed a representation for regularization. The same was rejected by order dated 20.5.1985 as he was over aged. According to the appellant, respondent stopped attending his duties in the office from 6.12.1987 and served a notice seeking reinstatement on 30.5.1988. On 3.6.1988 respondent filed L.A. No.201 of 1988 and 202 of 1988 for payment of difference in salary in the period from 24.8.1982 to 5.12.1987 and for overtime wages for the same period. On 5.7.1988 respondent filed a statement of claim before Conciliation Officer (Central), New Delhi. The efforts for conciliation proceedings failed and on 30.6.1989 failure report was submitted to Ministry for Labour. E F G

Respondent filed a writ petition in 1993. By order dated 23.8.1995 respondent's writ petition was disposed of with a direction to refer the matter to the Industrial Tribunal notwithstanding the pendency of the matter filed by the respondent regarding minimum wages and overtime. The H

A reference was rejected earlier by order dated 6.8.1990. The rejection was made on the ground that the matter was pending in Court. However, pursuant to the order of the High Court, reference was made under Section 10 of the Industrial Disputes Act, 1947 (in short the 'Act'). By award dated 9.2.2001 the Tribunal directed reinstatement with back wages. It is to be noted that the matter was decided ex-parte. In the year 2002, the scheme in which respondent claimed to have been appointed was abandoned by the Government of India. On 1.8.2002 the respondent filed writ petition No.4662 of 2002 for implementation of order of the Tribunal. On 17.10.2003 the appellant filed writ petition No.7707 of 2003 challenging the award. By order dated 21.9.2004, the writ petition filed by the appellant was dismissed while the writ petition filed by the respondent was allowed. The LPA was filed in respect of the order in writ petition No.7707 of 2003. LPA 26 of 2005 which was filed against the order in Writ Petition No.4662 of 2002. LPA No.26 of 2005 was dismissed as withdrawn and the other LPA was dismissed by the impugned order dated 24.3.2005.

The primary stand of the appellant is that the unit has already been closed and, therefore, the direction for reinstatement could not have been given. In addition if the termination was in November, 1987 as claimed by the respondent, the writ petition filed was highly belated and no direction could have been given to refer the matter to the Industrial Tribunal.

Learned counsel for the respondents on the other hand submitted that the writ petition filed by the respondents has been allowed and therefore, the High Court was justified in dismissing the LPA.

4. Undisputedly the writ petition was filed after about five years. The High Court directed reconsideration of the matter and did not in fact direct reference to be made. Except in certain unexceptional cases courts should not direct reference to be made. It is within the domain of the Government to decide as to in which case reference is to be made and in which case

reference is not to be done. The reference was apparently made on the ground that the High Court had directed a reference to be made. That was not factually correct. Be that as it may, writ petition filed by the respondents was allowed by the High Court. But the fact that the project has already been closed cannot be lost sight of. Also relevant is the belated filing of the writ petition.

5. In *State of M.P. & Ors. v. Arjunlal Rajak* [2006(2) SCC 711] it was held as follows:

“11. Keeping in view the fact that the services of the respondent were terminated on the ground that the production unit in which he was working itself had been closed, we are of the opinion that interest of justice would be subserved if a monetary compensation of Rs 10,000/- is granted to him. It, however, goes without saying that he would be entitled to the wages for the period he had actually worked pursuant to or in furtherance of the order of the Labour Court and as also of the High Court upon his reinstatement. The award of the Labour Court as also the judgment of the High Court are set aside.”

6. In *Municipal Council, Sujapur v. Surinder Kumar* [2006(5) SCC 173] it was held as follows:

“22. We, therefore, allow the appeal and set aside the directions of the Labour Court and direct that in place of the respondent being reinstated with back wages, the appellant would pay monetary compensation to him, quantified at Rs.50,000. We make no order as to costs.”

7. In the peculiar facts of the case we direct that the respondent be paid an amount of Rs.50,000/- in full and final settlement of his claim. The direction for reinstatement and/or back wages stands set aside.

8. The appeal is allowed to the aforesaid extent with no order as to costs.

K.K.T.

Appeal partly allowed.